

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOE SELLIKEN,

Plaintiff,

v.

COUNTRY MUTUAL INSURANCE
CO.,

Defendant.

NO: 12-CV-0515-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

BEFORE THE COURT are Defendant's Motion for Partial Summary Judgment (ECF No. 17) and Defendant's Motion to Strike Plaintiff's Response Memorandum (ECF No. 27). These matters were heard with telephonic oral argument on September 4, 2013. Charles R. Steinberg appeared on behalf of the Plaintiff. Daniel E. Thenell appeared on behalf of Defendant. The Court has reviewed the completed briefing and the record and files herein, and is fully informed. This Order will memorialize and supplement the Court's oral ruling at the conclusion of the hearing.

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 1

1 BACKGROUND

2 This lawsuit arises from Defendant's denial of a homeowner's insurance
3 claim relating to a fire at Plaintiff's residence. Plaintiff has asserted claims for (1)
4 payment of benefits due under the policy; (2) bad faith denial of coverage; and (3)
5 failure to conduct a reasonable investigation in violation of Washington's
6 Insurance Fair Conduct Act.

7 Defendant has moved for partial summary judgment on Plaintiff's second
8 and third claims. Defendant asserts that it is immune from such claims pursuant to
9 RCW 48.50.075 because it denied coverage in reliance upon a law enforcement
10 investigation which concluded that Plaintiff intentionally set the fire. For the
11 reasons discussed below, the Court will grant the motion.

12 FACTS

13 Plaintiff Joe Selliken ("Plaintiff") owns a home located in Orondo,
14 Washington. At all times relevant to this lawsuit, the home was insured under a
15 homeowner's policy issued by Defendant Country Mutual Insurance Company
16 ("Defendant"). On November 22, 2011, Plaintiff's home caught fire and sustained
17 approximately \$200,000 worth of damages. Plaintiff filed a claim under his
18 homeowner's policy to cover the loss.

19 Almost immediately after the fire was extinguished, fire officials from the
20 Douglas County Sheriff's Office ("DCSO") began investigating the fire as arson.

1 DCSO investigators notified Defendant of their suspicions about the origin of the
2 fire and agreed to keep Defendant apprised of the results of their investigation.
3 While this investigation was pending, Defendant began processing Plaintiff's claim
4 under a reservation of rights. Defendant also began its own investigation into the
5 cause of the fire. Among other measures, Defendant hired a "cause and origin"
6 expert, interviewed witnesses, and examined Plaintiff and his roommate under
7 oath. Defendant sent letters to Plaintiff on February 10, 2012, March 6, 2012,
8 March 19, 2012, April 20, 2012, May 1, 2012, and May 23, 2012, advising him of
9 the status of its investigation.

10 In early 2012, DCSO investigators concluded their investigation and
11 determined that the fire had been intentionally set. Plaintiff was the only suspect
12 identified during the course of the investigation. DCSO referred the case to the
13 Douglas County Prosecutor's Office for criminal charges. For reasons that are
14 unclear from the existing record, prosecuting authorities declined to file charges.

15 Plaintiff filed the instant lawsuit on July 12, 2012. Defendant denied
16 Plaintiff's claim on July 27, 2012. In its denial of coverage letter, Defendant
17 stated:

18 Country Mutual is in possession of a written report from a law
19 enforcement agency that concludes that the fire at Mr. Selliken's
20 residence was intentionally set. Furthermore, Mr. Selliken is listed on
the report as being investigated in the arson. The applicable policy
excludes coverage for losses intentionally caused by an insured.

1 ECF No. 18-10 at 5. Defendant now seeks summary dismissal of Plaintiff's claims
2 for bad faith denial of coverage and failure to perform a reasonable investigation.
3 Defendant has not moved for summary judgment on Plaintiff's claim to recover
4 benefits allegedly due under the policy.

5 DISCUSSION

6 Summary judgment may be granted to a moving party who demonstrates
7 "that there is no genuine dispute as to any material fact and that the movant is
8 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party
9 bears the initial burden of demonstrating the absence of any genuine issues of
10 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then
11 shifts to the non-moving party to identify specific genuine issues of material fact
12 which must be decided by a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.
13 242, 256 (1986). "The mere existence of a scintilla of evidence in support of the
14 plaintiff's position will be insufficient; there must be evidence on which the jury
15 could reasonably find for the plaintiff." *Id.* at 252.

16 For purposes of summary judgment, a fact is "material" if it might affect the
17 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any
18 such fact is "genuine" only where the evidence is such that a reasonable jury could
19 find in favor of the non-moving party. *Id.* In ruling upon a summary judgment
20 motion, a court must construe the facts, as well as all rational inferences therefrom,

1 in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372,
2 378 (2007). The court may only consider evidence that would be admissible at
3 trial. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002).

4 **A. Immunity Under RCW 48.50.075**

5 Defendant has moved for summary judgment on Plaintiff's claims for bad
6 faith denial of coverage and failure to perform a reasonable investigation, arguing
7 that it is statutorily immune from such claims under the Insurance Fraud Reporting
8 Immunity Act, RCW Chapter 48.50. Defendant has specifically invoked RCW
9 48.50.075, which allows insurers to deny coverage in reliance upon a finding by a
10 law enforcement agency that the claimant has engaged in criminal activity related
11 to the claim. The statute provides:

12 In denying a claim, an insurer . . . who relies upon a written opinion
13 from an authorized agency specifically enumerated in RCW
14 48.50.020(1)(a) through (g) that criminal activity that is related to that
15 claim is being investigated, or a crime has been charged, and that the
claimant is a target of the investigation or has been charged with a
crime, is not liable for bad faith or other noncontractual theory of
damages as a result of this reliance.

16 Immunity under this section shall exist only so long as the incident for
17 which the claimant may be responsible is under active investigation or
18 prosecution, or the authorized agency states its position that the claim
includes or is a result of criminal activity in which the claimant was a
participant.

1 RCW 48.50.075. Because it denied coverage in reliance upon the Douglas County
2 Sheriff's Office's finding that Plaintiff committed arson, Defendant argues, it
3 cannot be liable for bad faith or failure to conduct a reasonable investigation.

4 As a threshold matter, the Court notes that Plaintiff has wholly ignored
5 Defendant's argument concerning the application of RCW 48.50.075. Rather than
6 attempting to rebut Defendant's assertions that it is immune from liability, Plaintiff
7 simply asserts that Defendant failed to perform a reasonable investigation. *See*
8 ECF No. 25 at 15 ("The evidence shows that [Defendants'] investigation into the
9 fire claim . . . was incomplete, inaccurate, and one-sided."). By failing to address
10 the issue of statutory immunity under RCW 48.50.075, Plaintiff has effectively
11 conceded that Defendant is immune from the extra-contractual claims at issue. *See*
12 *S. Nevada Shell Dealers Ass'n v. Shell Oil Co.*, 725 F. Supp. 1104, 1109 (D. Nev.
13 1989) (party opposing summary judgment implicitly concedes an issue when it
14 fails to respond to the moving party's argument).

15 Even if Plaintiff had not conceded the issue, the record reveals no disputed
16 issues of material fact concerning the applicability of RCW 48.50.075. Plaintiff
17 "freely admit[s]" that the fire was investigated as an arson and that he was named
18 as a suspect. ECF No. 25 at 10. This admission is supported by the record.
19 Indeed, the record reflects that Plaintiff was—and remains to this day—the *only*
20 suspect identified by DCSO investigators. *See* ECF No. 18-1; Groseclose Decl.,

1 ECF No. 19, at ¶ 14; Groseclose Dep., ECF No. 18-11, at Tr. 59. The objective
2 evidence of record further indicates that the arson investigation was performed in a
3 thorough and competent manner. *See* ECF No. 18-1. Although prosecuting
4 authorities ultimately declined to file criminal charges, *see* Groseclose Dep., ECF
5 No. 18-11 at Tr. 59, the DCSO's conclusion that Plaintiff intentionally set the fire
6 appears to be well-supported. No reasonable jury could find that Defendant acted
7 unreasonably in relying upon that conclusion as a basis for denying Plaintiff's
8 claim.¹ Accordingly, the Court finds that Defendant is immune from liability for
9 Plaintiff's claims for bad faith and failure to perform a reasonable investigation
10 pursuant to RCW 48.50.075. Plaintiff may, of course, continue to litigate the issue
11 of whether coverage is available under the policy.

12 **B. Defendant's Motion to Strike**

13 Defendant's motion to strike the materials submitted by Plaintiff in
14 opposition to the instant motion as untimely is denied. The Court has fully
15 considered these materials in reaching the decision above.

16
17 ¹ The Court notes that RCW 48.50.075 contains no exception for *unreasonable*
18 reliance upon the results of a law enforcement investigation. Even if such an
19 exception existed, however, there are no genuine issues of material fact concerning
20 the reasonableness of Defendant's reliance in this case.

IT IS HEREBY ORDERED:

1. Defendant's Motion for Partial Summary Judgment (ECF No. 17) is
GRANTED.
2. Defendant's Motion to Strike Plaintiff's Response Memorandum (ECF
No. 27) is **DENIED.**
3. The District Court Executive is hereby directed to enter this Order and
provide copies to counsel.

DATED September 4, 2013.



Thomas O. Rice
THOMAS O. RICE
United States District Judge